VZCZCXRO9045
PP RUEHDBU RUEHPW
DE RUEHBUL #1043 1151535
ZNR UUUUU ZZH
P 251535Z APR 09
FM AMEMBASSY KABUL
TO RUEHC/SECSTATE WASHDC PRIORITY 8608
INFO RUCNAFG/AFGHANISTAN COLLECTIVE PRIORITY

UNCLAS KABUL 001043

SENSITIVE SIPDIS

E.O. 12958: N/A

TAGS: PGOV PREL PHUM AF

SUBJECT: SUPREME COURT DECISION MAY HASTEN PUBLICATION OF

MEDIA LAW

REF: KABUL 913

11. (U) SUMMARY. In a development that could open the path to gazetting the media law, the Supreme Court has sided with President Karzai's objection to a provision in the media law requiring the Lower House to confirm the president's pick to head state-run Radio and Television of Afghanistan (RTA). In a letter to Karzai, the court wrote that the Lower House's effort to limit executive branch influence over RTA was unconstitutional. The Parliament may dispute the Court's authority on this matter. In the same letter, the court also announced that a Lower House effort to establish a separate body from the court to interpret the Constitution was also unconstitutional. Post will transmit a translation of the court's letter septel. End Summary.

Court Strikes Down Provision on RTA Chief Requiring Parliamentary Approval

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- 12. (U) In an April 25 letter to Karzai, the Supreme Court considered invalid a provision in the media law added by Parliament that would have required legislative approval for the president's choice to head RTA to win approval from the Lower House. Karzai has held up publication of the media law in the government's official gazette, claiming he wanted the court to review the law for constitutionality (reftel). He only formally asked the court to do so last week. MPs argued that the law should have gone into force immediately after the Lower House overrode Karzai's veto last September.
- 13. (U) The future of the media law now rests with Karzai and the Cabinet. Government officials contacted by the Embassy on Saturday were unsure whether the Palace would return the law to Parliament for another vote or whether Karzai would instruct the Ministry of Justice to publish the law minus the disputed provision in the official legal gazette. Journalists and media freedom activists were waiting to see the text of the court's letter, which is not yet public, before issuing a reaction.
- 14. (U) The court's second advisory opinion, that the Lower House's desire to establish a separate judicial body for interpreting the Constitution was also unconstitutional, deals a blow to many opposition politicians' efforts to extricate the Supreme Court from ruling on constitutional disputes between the executive and legislative branches. In practice, the court has almost always sided with Karzai. The court's opinion clears the way for the establishment of the Independent Commission for Supervision of the Implementation of the Constitution, called for in Article 157 of the Constitution, to go forward. The opinion goes against the objective of Lower House MPs, who had wanted this commission to interpret and rule on constitutional issues (instead of the Supreme Court). Instead, the opinion backs Karzai's position that the commission's vague purpose to "supervise the implementation of the Constitution" does not include legal interpretation.

15. (SBU) The Karzai-Parliament dispute held up publication of the media law for more than eight months. Today's decision could clear the way for publication of the law in the gazette, despite ongoing constitutional disputes. Many opposition politicians and journalists strongly believed confirmation of the RTA chief by the Lower House would help assure the state-run media's impartiality during election campaigns. However, in reality that provision would have had little impact on this year's election. Had the RTA chief required a confirmation vote, Karzai could have stalled a vote until after Parliament's June-July recess. Even if he felt compelled to put his choice up for confirmation earlier and lost that vote, Karzai would likely have kept his choice in office in spite of a failed vote in Parliament (Karzai has kept three current Cabinet ministers in office despite failing confirmation or impeachment votes, much to the Lower House's annoyance). Given that reality, we will continue to press for quick publication of the law in the gazette, accepting that the remaining provisions improve the overall protection for both independent and state-run media in Afghanistan. RICCIARDONE